

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-33

12 **CAROLINA FOSTER**

ACCUSATION

13 22826 Vermont Street
Unit 26
Hayward, CA 94541

14 350 Newton Ave.
15 Oakland, CA 94606
16 Registered Nurse License No. 351198

17 Respondent.

18
19 Complainant alleges:

20
21 **PARTIES**

22 1. Heidi J. Goodman (Complainant) brings this Accusation solely in her official capacity
23 as the Assistant Executive Officer of the Board of Registered Nursing, Department of Consumer
24 Affairs.

25 2. On or about September 30, 1982, the Board of Registered Nursing issued Registered
26 Nurse License Number 351198 to Carolina Foster (Respondent). The Registered Nurse License
27 expired on May 31, 2006, and has not been renewed.

28 ///

1 JURISDICTION

2 3. This Accusation is brought before the Board of Registered Nursing (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.
5

6 STATUTORY PROVISIONS

7 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
8 that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 5. Section 2761 of the Code states:

12 "The board may take disciplinary action against a certified or licensed nurse or deny an
13 application for a certificate or license for any of the following:

14 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

15 ...

16 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
17 functions, and duties of a registered nurse, in which event the record of the conviction shall be
18 conclusive evidence thereof."

19 ...

20 6. Section 2762 of the Code states:

21 "In addition to other acts constituting unprofessional conduct within the meaning of this
22 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
23 chapter to do any of the following:

24 ...

25 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
26 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
27 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
28

himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

“(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.”

• • •

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

9. Section 118(b) of the Code provides: “The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 CAUSE FOR DISCIPLINE
2 (CRIMINAL CONVICTIONS)

3 11. Respondent is subject to disciplinary action under sections 2761(a), 2761(f), 2762(b),
4 2762(c), and/or 490 in that on or about May 20, 2008, in a criminal proceeding entitled *The*
5 *People of the State of California v. Carmelina Mannone Foster* in Alameda County Superior
6 Court, Fremont Hall of Justice, Case Number 227099-7, Respondent was convicted by her plea of
7 guilty of violating Penal Code section 415 (fighting; noise; offensive words). The circumstances
8 are that on or about November 19, 2007, Respondent was arrested for being drunk in public.
9 Respondent was charged with violating Penal Code section 647(f) (drunk in public), and pled
10 guilty to the lesser included offense, Penal Code section 415.

11 12. Respondent is further subject to disciplinary action under sections 2761(a), 2761(f),
12 2762(b), and/or 490 in that on or about April 25, 2008, in a criminal proceeding entitled *The*
13 *People of the State of California v. Carolina Mannone Foster* in Alameda County Superior Court,
14 Wiley W. Manuel Courthouse, Case Number 538925, Respondent was convicted by her plea of
15 no contest of violating Penal Code section 484 (petty theft). The circumstances are that on or
16 about March 12, 2008, Respondent was arrested for attempting to steal a bottle of tequila at the
17 18th Street Lucky's Store in Oakland, California. Respondent was intoxicated at the time of her
18 arrest.

19
20 DISCIPLINE CONSIDERATIONS

21 13. To determine the degree of discipline, if any, to be imposed on Respondent,
22 Complainant alleges that on or about March 1, 1997, in a prior disciplinary action entitled *In the*
23 *Matter of the Accusation Against Carolina Foster* before the Board of Registered Nursing, in
24 Case Number 96-105, Respondent's license was placed on probation for three years, for arriving
25 at her place of work under the influence of alcohol on multiple occasions. That decision is now
26 final and is incorporated by reference as if fully set forth.

27 ///

28 ///

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 351198, issued to Carolina Foster.

2. Ordering Carolina Foster to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/22/09


HEIDI J. GOODMAN
Assistant Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2009404014